

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Charles C. Hundley,)	CASE NO.: 1:20CV2803
)	
Petitioner,)	JUDGE JOHN ADAMS
)	
)	
Warden Douglas Fender,)	<u>MEMORANDUM OF OPINION AND</u>
)	<u>ORDER</u>
)	
Respondent.)	
)	

On January 4, 2024, the Magistrate Judge issued a Report and Recommendation that the Court dismissed grounds two, three, and four of Petitioner Charles Hundley's habeas petition and deny ground one on its merits. On January 22, 2024, Hundley moved to extend the time for him to appeal. Doc 14. That motion is GRANTED, and Hundley's objections filed on February 20, 2024 are deemed timely.

Where objections are made to a magistrate judge's R&R this Court must:

must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

Fed. R. Civ. P. 72(b)(3).

Hundley challenges only the R&R's merits review of his first ground for relief. Specifically, Hundley contends that the R&R erred when it found no merit to his argument that his pre-arrest silence was wrongfully used against him. In his objection, Hundley focuses upon precedent related to post-arrest and/or post-*Miranda* silence. In so doing, he ignores the binding precedent that was properly noted in the R&R. The Fifth Amendment is not violated where a

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defendant voluntarily takes the witness stand in his own defense and is impeached with his prior, pre-arrest silence. *Jenkins v. Anderson*, 447 U.S. 231, 235 (1980). As the Supreme Court has expressed approved of the use of pre-arrest silence, the R&R properly found no merit in Hundley's argument.

Accordingly, the R&R is adopted in its entirety, and the petition is DENIED. The Court certifies, pursuant to 28 U.S.C. § 1915(A)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability.

This Order is entered pursuant to Federal Rule of Civil Procedure 58.

IT IS SO ORDERED.

Date: 2/27/2024

/s/ John R. Adams
JUDGE JOHN R. ADAMS
UNITED STATES DISTRICT JUDGE